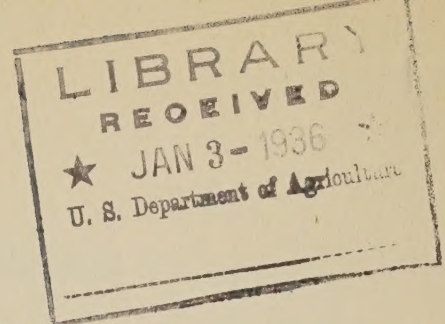


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UNITED STATES DEPARTMENT OF AGRICULTURE
Bureau of Agricultural Economics

RULES AND REGULATIONS

(As Amended)

Of the Secretary of Agriculture

Governing the

GRADING AND CERTIFICATION OF

CANNED FRUITS AND VEGETABLES

Under an Act of Congress Approved May 17, 1935

(Public No. 62, 74th Congress)

Washington, D. C.

November 1935

By virtue of the authority vested in the Secretary of Agriculture by the act of Congress approved May 17, 1935 (Public No. 62, 74th Congress) entitled "An Act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1936, and for other purposes" authorizing the establishment of an inspection service for farm products, I, H. A. Wallace, Secretary of Agriculture, do make, prescribe, publish, and give public notice of the following amendment of the Regulation of the Secretary of Agriculture approved March 23, 1932, governing the grading and certification of canned fruits and vegetables, such amendment to be effective immediately.

Amend Regulation 8, Section 3, Paragraph 1 to read:
Any applicant who shall have paid for 50 or more gradings at any one office of official grading, in accordance with Section 2 of this Regulation, within the period of one year immediately following the filing of a declaration of his intention to avail himself of this privilege shall receive a refund from the Department at the rate of 25 percent of the total amount paid for the first 50 gradings, after which the fee for such applicant shall be 75 percent of the fees mentioned in Section 2 for the remainder of the year.

In testimony whereof I hereunto set my hand and cause the official seal of the Department of Agriculture to be affixed, in the city of Washington this 10th day of October, 1935.

H. A. Wallace

Secretary of Agriculture

service rendered: Provided, That certificates issued by the authorized agents of the Department shall be received in all courts of the United States as prima facie evidence of the truth of the statements therein contained."

Paragraph 2. - Secretary. - The Secretary or Acting Secretary of Agriculture of the United States.

Paragraph 3. - Bureau. - The Bureau of Agricultural Economics of the United States Department of Agriculture.

Paragraph 4. - Canned Fruits and Vegetables. - Any fruits or vegetables preserved in hermetically sealed containers and sterilized by heat.

Paragraph 5. - Official Grader. - An employee of the Department of Agriculture authorized by the Secretary to investigate and certify to any financially interested party the quality and condition of canned fruits and vegetables under the Act.

Paragraph 6. - Official Sampler. - An employee of the Department of Agriculture, or other person authorized or licensed by the Secretary, to draw official samples of canned fruits and vegetables under the Act and these Regulations.

Paragraph 7. - Person. - An individual, corporation, partnership, or two or more persons having a joint or common interest.

Paragraph 8. - Grade Certificate. - A certificate issued under the Act, stating the grade, quality, and/or condition of canned fruits and vegetables.

Paragraph 9. - Regulations. - Rules and regulations of the Secretary, under the Act, relating to canned fruits and vegetables.

REGULATION 2 - ADMINISTRATION

Section 1. - The Chief of the Bureau is charged with the supervision of the performance of all duties arising in the administration of the Act.

RULES AND REGULATIONS (AS AMENDED) OF THE SECRETARY OF AGRICULTURE
GOVERNING THE GRADING AND CERTIFICATION OF
CANNED FRUITS AND VEGETABLES

REGULATION 1 - DEFINITIONS

Section 1. - Words used in these regulations in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

Section 2. - For the purpose of these regulations, unless the context otherwise require, the following terms shall be construed, respectively, to mean:

Paragraph 1. - The Act. - The following provision of an act of Congress entitled "An Act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1932, and for other purposes," approved February 23, 1931, "For enabling the Secretary of Agriculture, independently and in cooperation with other branches of the Government, State agencies, purchasing and consuming organizations, boards of trade, chambers of commerce, or other associations of business men or trade organizations, and persons or corporations engaged in the production, transportation, marketing, and distribution of farm and food products, whether operating in one or more jurisdictions, to investigate and certify to shippers and other interested parties the class, quality and/or condition of cotton, tobacco, fruits and vegetables, whether raw, dried, or canned, poultry, butter, hay, and other perishable farm products when offered for interstate shipment or when received at such important central markets as the Secretary of Agriculture may from time to time designate, or at points which may be conveniently reached therefrom, under such rules and regulations as he may prescribe, including payment of such fees as will be reasonable and as nearly as may be to cover the cost for the

REGULATION 3 - WHERE SERVICE IS OFFERED

Section 1. - Paragraph 1. - Official samples may be drawn by employees of the Department designated for the purpose at the following points and such other points as may be conveniently reached therefrom:

Albany, N. Y.	Houston, Tex.	Providence, R. I.
Atlanta, Ga.	Indianapolis, Ind.	Rochester, N. Y.
Baltimore, Md.	Jacksonville, Fla.	Sacramento, Calif.
Boise, Idaho.	Kansas City, Mo.	St. Louis, Mo.
Boston, Mass.	Los Angeles, Calif.	Salt Lake City, Utah.
Buffalo, N. Y.	Memphis, Tenn.	San Diego, Calif.
Chicago, Ill.	Milwaukee, Wis.	San Francisco, Calif.
Cincinnati, Ohio.	Minneapolis, Minn.	San Juan, P. R.
Cleveland, Ohio.	Newark, N. J.	San Pedro, Calif.
Columbus, Ohio.	New Haven, Conn.	Seattle, Wash.
Denver, Colo.	New Orleans, La.	Springfield, Mass.
Detroit, Mich.	New York, N. Y.	Tulsa, Okla.
Fargo, N. D.	Norfolk, Va.	Vallejo, Calif.
Fort Worth, Tex.	Omaha, Neb.	Washington, D. C.
Great Lakes, Ill.	Philadelphia, Pa.	Wilkes-Barre, Pa.
Harrisburg, Pa.	Pittsburgh, Pa.	
Hartford, Conn.	Portland, Ore.	

(NOTE: The above offices may be addressed as follows:
Food Products Inspection Service, U. S. Department of Agriculture)

Paragraph 2. - Official grading may be done at Washington, D. C. and such other points as may be designated from time to time.

REGULATION 4 - APPLICATION FOR GRADING

Section 1. - An application for grading service under the Act may be made by a State or by any person having a financial interest in the products involved, including canners, receivers, common carriers, or by any authorized person in behalf of such applicant. Such application may be filed with an official grader, or in any office mentioned in Regulation 3, Section 1, Paragraph 1. Proof of the applicant's interest or of the authority of any person applying for grading in behalf of another may be required in the discretion of the official grader or may be transmitted through any licensed sampler or through the person drawing samples.

Section 2. - Such application shall be in English, and may be made in writing or orally, by telegraph, telephone, or otherwise. It may be made for one or more cars, lot or lots, sample or samples of canned fruits and vegetables, or may be a blanket application for grading of all designated cars, lots or samples of canned fruits and vegetables within a given period, or within a given warehouse, store, or other place. If made orally, the official grader may require that it be confirmed in writing or by telegraph, setting forth the facts required by Section 3 of this regulation.

Section 3. - Each application for grading shall state (a) the name and post office address of the applicant, and of the person making the application, if acting as agent for another; (b) the name and post office address of the canner, if known; (c) the kind and quality of canned fruits and vegetables involved; (d) the financial interest of the applicant therein; (e) the identification of the canned fruits or vegetables by (1) the declared grade, label, brand, code or other marks and their meaning if known; and (2) the car initials, car number and name of common carrier, if possible; (3) name and location of warehouse, store or other place the canned fruits and vegetables are located, or (4) any other pertinent information; and (f) the particular quality or condition concerning which inspection or grading is requested, including the time when the service is desired and where the products to be examined are located; (g) the name and address of the buyer when the canned fruits and vegetables are to be graded in the receiving market; (h) the name of the originating points and the destination, when known.

Section 4. - Any application, upon request of the applicant or for any noncompliance with the Act or any regulation thereunder, may be rejected by the official grader in charge of the office in which it is filed, and such grader shall immediately notify the applicant by telegraph at the applicant's expense or in writing of the reasons for such rejection.

REGULATION 5 - SAMPLING AND GRADING

Section 1. - The applicant shall cause the canned fruits and vegetables for which grading is requested to be made accessible for sampling.

Section 2. - As many lots will be sampled and graded by official samplers and graders as facilities permit, and, as far as practicable, in the order in which applications are received. As far as practicable all samples submitted will be graded in the order in which they are received.

REGULATION 6 - CERTIFICATE OF GRADE

Section 1. - The official grader shall sign and issue a separate certificate for each lot of canned fruits and vegetables graded by him. If an application for grading is made by any branch of the Federal Government, or by a public institution, or by anyone for the purpose of determining whether canned fruits and vegetables for use by such applicant comply with contract specifications therefor, a formal certificate need not be issued, but the fact of such compliance or noncompliance with specifications may be indicated by an appropriate stamp or mark on the product or containers thereof, or otherwise, as the official grader may deem proper. Each kind of canned fruits and vegetables shall constitute a separate lot, and different types of the same kind of canned fruits and vegetables shall be considered separate lots.

Section 2. - Immediately upon its issuance, the original certificate shall be delivered or mailed to the applicant or a person designated by him. Upon the request of the applicant prior to issuance, not more than two additional copies of the certificate may be issued to him without extra charge.

Section 3. - Notification of grading shall be mailed or delivered to all parties who are entitled to copies of certificates, provided the addresses of the parties are known to the official grader.

Section 4. - Upon request of the applicant and at his expense, all or any part of the contents of a certificate may be telegraphed or telephoned to him or to any person designated by him.

Section 5. - No official grader shall grade any product in which he is directly or indirectly financially interested.

REGULATION 7 - APPEAL GRADING

Section 1. - An application for appeal grading by the original applicant or other persons financially interested in the product may be filed, (1) in the grading office nearest the point where the product is located, or (2) with the official grader who performed the original grading, or (3) with the Chief of the Bureau, whenever such applicant or person is dissatisfied with the determination stated in the original certificate. Such application shall be filed within 30 days, exclusive of Sundays and legal holidays, from the date of the original grading certificate and shall state the reasons therefor and should be accompanied by a copy of any previous grading certificate, inspection report or other information which the applicant shall have received regarding the grade and condition of the product at the time of the original grading. Such application may be made in writing or by telegraph, telephone or otherwise.

Section 2. - If it shall appear that the reasons stated in the application for appeal grading are frivolous or unsubstantial, or that the identity of the product has not been so maintained as to enable the grader to identify the lot as having been previously graded, or that the product has undergone material change since the original grading, or the regulations have not been complied with, the application may be denied. Otherwise, the appeal grading shall, if practicable, be made by official graders especially designated therefor by the Chief of the Bureau.

Section 3. - Grading requested to determine the quality or condition of canned fruits and vegetables which may have undergone material change since the original grading shall not be considered an appeal grading within the meaning of this regulation. Subsequent grading, for the purpose of securing up-to-date certificates when the applicant does not question the correctness of certificates previously issued covering the lot in question will not be considered appeal grading within the meaning of this regulation.

Section 4. - Appeal grading shall be made as far as possible in the order in which the applications therefor are filed and takes precedence over other pending applications.

Section 5. - Immediately after an appeal grading has been completed, a certificate designated as "Appeal Grade Certificate" shall be signed and issued, referring specifically to the original certificate and stating the quality and condition of the product as shown by the appeal grading. In all other respects, the provisions of Regulation 6 shall apply to such appeal grade certificate, except that if the applicant for appeal grading be not the original applicant a copy of the appeal grade certificate shall be mailed to the original applicant.

REGULATION 8 - FEES

Section 1. - Paragraph 1. - For each lot of canned fruits or vegetables graded, except for branches of the Federal Government, a fee shall be paid by the applicant and in advance if required by the official grader.

Paragraph 2. - A lot may consist of any number of containers, of one commodity and one grade.

Section 2. - Paragraph 1. - For each lot of canned fruits or vegetables graded consisting of 600 cases but not more than 1,000 cases, the samples having been drawn by an employee of the U. S. Department of Agriculture, a fee of \$5.00 shall be collected for the lot. For such lots containing in excess of 1,000 cases, a fee shall be collected on the basis of \$1.00 for each 200 cases or fraction thereof, provided that a minimum fee of \$3.00 shall be collected for lots containing less than 600 cases, except as otherwise provided in this regulation.

Paragraph 2. - For each lot of canned fruits or vegetables graded, samples having been drawn by a sampler licensed by the Secretary, and accompanied by a certificate of sampling, a fee shall be collected at 60 percent of the rate mentioned in Paragraph 1 of this section, with a minimum of \$3.00.

Paragraph 3. - For each sample of 12 cans or less of canned fruits or vegetables graded, samples having been submitted by someone other than an employee of the U. S. Department of Agriculture, a fee of \$3.00 shall be paid.

Paragraph 4. - For the purpose of these regulations whether the canned fruits and vegetables be cased or uncased, a case shall be construed to consist of the usual number of cans ordinarily packed in a case. For example, 48 No. 1 picnic size cans, 24 No. 2, No. 2-1/2, or No. 3 size cans, 12 No. 5 size, or 6 No. 10 size cans shall constitute a case.

Section 3. - Paragraph 1. - Any applicant who shall have paid for 50 or more gradings at any one office of official grading, in accordance with Section 2 of this regulation, within the period of one year immediately following the filing of a declaration of his intention to avail himself of this privilege shall receive a refund from the Department at the rate of 25 percent of the total amount paid for the first 50 gradings, after which the fee for such applicant shall be 75 percent of the fees mentioned in Section 2 for the remainder of the year.

Paragraph 2. - Any applicant who shall have paid for 1,000 or more gradings at any one office of grading, in accordance with Section 2 of this regulation, within the period of one year immediately following the filing of a declaration of his intention to avail himself of this privilege shall receive a refund from the Department at the rate of $33\frac{1}{3}$ percent of the rates provided in Section 2, after which the fee for such applicant shall be $66\frac{2}{3}$ percent of the fees mentioned in Section 2 for the remainder of the year.

Section 4. - Such charges may be made for traveling expenses and other items paid or incurred by the Bureau in connection with grading or sampling, at points other than those named in Regulation 3, or appeal grading where the services of an appeal grader are required, as will reimburse the Department.

Section 5. - If the applicant, when application is filed, requests a score card showing in detail the grading of each can graded, such score card shall be furnished for each 12 cans scored, for which an additional fee of 50¢ per card will be assessed.

Section 6. - A fee of \$1.00 each shall be assessed for copies of certificates furnished to persons having a financial interest in the canned fruits and vegetables involved, in addition to those mentioned in Regulation 6, Section 2.

Section 7. - Fees for appeal gradings shall be double those for original gradings, except that when it is found that there was a material error in the determination based upon the original grading, no fee will be charged for the appeal grading.

Section 8. - When grading is done and formal certificates are not issued or when the services rendered are such that charges based upon the foregoing sections would be inadequate or inequitable, charges may be based on the time consumed by the official grader at the rate of not to exceed \$2.60 per hour.

REGULATION 9 - LICENSED SAMPLERS AND OFFICIAL SAMPLING

Section 1. - Paragraph 1. - Application for licenses to sample canned fruits and vegetables under the Act shall be made to the Chief of Bureau on forms furnished for the purpose by him.

Paragraph 2. - Each such application shall be signed by the applicant, shall be verified by him under oath or affirmation administered by a duly authorized officer, and shall contain or be accompanied by: (a) Satisfactory evidence that he has passed his 21st birthday; (b) a statement indicating his present occupation; (c) a statement showing his occupation for ten years prior to date of application, together with names of employers; (d) a statement by the applicant that he agrees to comply with the terms of the Act, rules and regulations thereunder so far as they may relate to him; (e) a statement indicating the fees he will charge, if licensed; (f) such other information as the Chief of Bureau may require.

Section 2. - Each licensed sampler, when requested, shall without discrimination, as soon as practicable and upon reasonable terms, draw samples from such lots of canned fruits or vegetables as are in such condition as to permit adequate and proper sampling.

Section 3. - Paragraph 1. - In the absence of specific instructions from the Bureau directing otherwise, each licensed sampler or employee of the Department authorized to sample canned fruits and vegetables for the purpose of these regulations, shall so draw samples from different locations in each lot that the samples accurately reflect the quality and condition of the lot; 1 can to be drawn from each 1,000 cans in a lot of can sizes No. 3 and smaller, and 1 can for each 600 cans of sizes No. 5 and No. 10.

Paragraph 2. - If, in the opinion of the sampler, conditions require additional samples, such additional samples may be drawn as the official grader or licensed sampler may deem necessary.

Section 4. - Samplers will forward, at the expense of the applicant, all samples drawn by them to such grading offices as the Bureau may direct, accompanied by a statement in duplicate, certifying to the identity of the lot.

Section 5. - A sampler's license may be suspended, pending final action by the Secretary of Agriculture, by any official by whom it may be countersigned whenever such official shall deem such action to be for the good of the service. Within seven days after any such suspension, the licensee may file an appeal in writing to the Secretary of Agriculture, supported by any argument or evidence that he may wish to offer in his behalf.

Section 6. - Upon receipt of the sample at the office of the grader, the sample shall be divided, one-half to be used for grading and the remainder retained as a check sample. The check sample will be held until the applicant indicates that sale of the lot from which it was drawn has been completed and that there is no further use for it, but will not be held for a period exceeding one year from date of grading. Upon request of applicant, the check or comparison sample or samples will be returned to the applicant at his expense; otherwise, the samples will be disposed of in such manner as the Chief of Bureau may direct.

REGULATION 10 - FRAUD

Section 1. - Any wilful misrepresentation, or any deceptive or fraudulent practice made or committed by any applicant for grading or appeal grading including the submission of improperly drawn or false samples drawn with intent to deceive, or the improper use of the grade certification on labels or invoices may be deemed sufficient cause for declining further applications for grading service from the person guilty thereof.

REGULATION 11 - PUBLICATION

Section 1. - Publication under the Act and these regulations shall be made in such media as the Bureau may from time to time designate for the purpose.